

**Remarks**

The Examiner has objected to the drawings and the specification and rejected Claim 3 under 35 U.S.C 112 because the drawings fail to show an "angle of 90 degrees" as depicted in Claim 3. Applicant has revised Figure 2 to more clearly illustrate angle  $\alpha$ , the angle between the two spring blades 7 illustrated in the Figure. The specification has been amended at para. [00034] to define the angle  $\alpha$ , the angle the two spring blades in Figure 2 are shifted with respect to each, as equal to 90°. Entry of these Amendments and favorable consideration thereof is earnestly requested. Accordingly, the examiner's objections are respectfully traversed. The Examiner's rejection of Claim 3 under 35 U.S.C. 112 is also traversed for the same reasons.

The Examiner has objected to the specification and rejected Claim 6 under 35 U.S.C 112 because "elastic TiNi" is not defined in the specification. TiNi, a titanium and nickel alloy, is a flexible and durable material commonly used in biomedical applications. Para. [00015] of the specification has been amended accordingly to more clearly define TiNi. Entry of the Amendment and favorable consideration thereof is earnestly requested. Accordingly, the Examiner's objection is respectfully traversed as is the Examiner's rejection of Claim 6 for the same reasons.

The Examiner has rejected Claims 1-11 under 35 U.S.C. § 102 as being anticipated by Pfeffer (US. Patent No, 5,735,289) or by Beyar et al. (U.S. Patent No. 5,964,771). Applicant respectfully submits that Claim 1, as amended, overcomes both rejections.

Claim 1 has been amended to incorporate the limitation of Claim 2 and Claim 2 has been cancelled. Entry of the Amendment, and favorable consideration thereof is earnestly requested.

Claim 1, as amended, requires that the at least two spring blades are shifted toward one another on the retaining element in such a way that the plane surface created by the

arcs are intersecting. This arrangement of the blades makes it possible to create a spatially expanded (i.e., three dimensional) cavity for the endoscopic intervention.

Pfeffer discloses an apparatus for organic specimen retrieval comprising a pouch (22) with a rim (25) defining an aperture of said pouch (22) and a tubular outer shaft (12). For dissecting a relatively large organic object into smaller pieces a wire mesh (24) is disposed inside said pouch (22). Pfeffer does not disclose an instrument designed for creating a cavity for an endoscopic intervention.

Pfeffer fails to disclose or teach that there are at least two spring blades forming an arc in the respective middle sections, whereby said at least two spring blades are shifted toward one another on the retaining element in such a way that the plane surface created by the arcs are intersecting. The single spring blade (rim 25) disclosed in Pfeffer acts to hold open or close off the pouch (22).

Pfeffer does not disclose, teach or suggest using at least two spring blades to form an arc for creating a cavity for an endoscopic intervention. In fact, by teaching that the pouch (22) is connected to rim (25), Pfeffer teaches away from the present invention. The pouch prevents access by a surgeon from entering the area of operation.

Furthermore, adding a second spring blade in addition to the rim (25) to form a second arc would prevent the practice the Pfeffer disclosure. A second blade would either interfere with the positioning of the pouch (22) or hinder the Pfeffer device's ability to open and close the pouch. Accordingly, Applicant respectfully submits that amended Claim 1 is patentable over this cited reference.

Beyar et al. disclose a stent removal system comprising a catheter (30) with at least two lumens (31) and a snare (32) which is continuous with proximally extending sections (34). Beyar does not disclose a medical instrument designed for creating a cavity for an

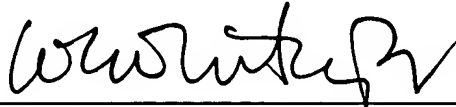
endoscopic intervention.

Beyar fails to disclose, teach or suggest using at least two spring blades to form an arc in the respective middle sections, whereby the at least two spring blades are shifted toward one another on a retaining element in such a way that the plane surface created by the arcs are intersecting. In Beyar the only one snare (32) is designed for gripping a stent for removal purposes, and not for creating a cavity for an endoscopic intervention.

Furthermore, if a second blade were introduced in addition to the snare (32), the teaching of Beyar could not be practiced. An additional blade would interfere with the ability of the Beyar device to snare and remove a stent. Accordingly, Applicant respectfully submits that amended Claim 1 is patentable over this cited reference.

For the reasons described above, Applicant respectfully submits that all pending Claims, Claims 1 and 3-11, are in condition for allowance.

Respectfully submitted,



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